

FCC MAIL SECTION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-236  
31477

ORIGINAL

DISPATCHED BY  
In re Applications of

MARTHA J. HUBER

RITA REYNA BRENT

MIDAMERICA ELECTRONICS SERVICE, INC.

STATON COMMUNICATIONS, INC.

For Construction Permit for a  
New FM Station on Channel 234A  
in New Albany, Indiana

) MM DOCKET NO. 93-51 ✓  
)  
) File No. BPH-911114ME  
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) File No. BPH-911115MC  
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) File No. BPH-911115ML  
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) File No. BPH-911115MU  
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MEMORANDUM OPINION AND ORDER

Issued: May 7, 1993; Released: May 10, 1993

Background

1. This is a ruling on a Motion To Compel Production Of Documents that was filed on April 16, 1993, by Martha J. Huber ("Huber") seeking discovery of documents of Midamerica Electronics Service, Inc. ("Midamerica"). Huber filed a Supplemental Document Request on April 19, 1993. Midamerica filed an Opposition on May 3, 1993. Midamerica also filed and served a Supplemental Document Production on May 3, 1993.

2. The Supplemental Document Request sought documents relating to any future employment. On May 3, 1993, Midamerica responded in its Supplemental Document Production that it was furnishing documents "submitted in response to various motions to compel and for supplemental production." The documents produced included a law firm's billing statement, and a Midamerica check made payable to the law firm of its communications counsel. Since there was no motion filed with respect to employment it appears that Midamerica has produced all such documents in its possession.

Facts and Discussion

3. The Motion To Compel relates to "financing documents." Midamerica stated in its application Form 301 that financing in the amount of \$85,000 would be supplied by Midamerica (\$35M corporate reserves), by Peter C.L. Boyce, President (\$35M personal assets), and Larry A. Young (\$25M personal assets).<sup>1</sup>

<sup>1</sup> The dollar amounts reported on Midamerica's Form 301 actually total \$95,000. There may have been a mistake in one of the reported amounts. This discrepancy can be cleared up in deposition.

4. With respect to evidence of financing, the standard document production required under the Commission's rules includes:

All bank letters and other financing documents with the dollar amount unexpurgated[.]

47 C.F. R. §1.325(c)(1)(v). Huber posits the proposition that when the Commission instituted the standard document production procedure, the production of documents contemplated to be in the possession of a self-financing applicant would be included in the standard production. Cf. Revision of Application for Construction Permit for Commercial Broadcast Station [FCC Form 301], 4 F.C.C. Rcd 3853, 3868 n.68 (1989) wherein the Commission required that when applicants certify affirmatively, they must have on hand:

...a balance sheet of the applicant; net income statements for the past two years; itemization of all applicant's deposits; financial statements for all persons who agreed to furnish funds, purchase stock, extend credit or guarantee loans; ....

#### Discussion

5. The relevance of the requested documents to the standard comparative issue is whether there may be an undisclosed principal involved whose identity would show up on financing documents and whether there is a viable proposal that must be compared. The standard production requires the turning over of all "financing documents." Midamerica has disclosed that Boyce and Young are the principals who will provide most of the funding. While only Boyce is proposed for integration, Young may be questioned on the extent and nature of his commitment, including the existence vel non of a written commitment, and on the documentation which gives a reasonable assurance that his personal assets are liquid and are adequate. It would appear that a written commitment from Young would likely exist. Such a commitment would be the type of document that is similar to the category of bank letter that is discoverable under the standard production. Midamerica must produce all of such commitment documents relating to Young and Boyce which are in existence.<sup>2</sup>

#### Ruling

Accordingly, IT IS ORDERED that subject to the above limitations, the Motion To Compel Production Of Documents filed on April 16, 1993, by Martha J. Huber IS GRANTED and in part IS DENIED.

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<sup>2</sup> Huber cites no authority for the proposition that "financing documents" under the standard document production include those enumerated for certification of Form 301. Of course, the parties may stipulate to the voluntary exchange of all documents under the Form 301 standard. But such an expansive interpretation of the standard production will not be applied by the Presiding Judge.

IT IS FURTHER ORDERED that all existing financing documents of Midamerica relating to commitments of Peter C.L. Boyce and Larry A. Young that were relied on or rejected by Midamerica for its financial certification SHALL BE PRODUCED within five days of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Richard L. Sippel", is written over the printed name.

Richard L. Sippel  
Administrative Law Judge